

STATE OF NEW MEXICO
COUNTY OF QUAY
MAGISTRATE COURT IN TUCUMCARI

FILED IN
QUAY COUNTY

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MAGISTRATE COURT
DIVISION I

PC

STATE OF NEW MEXICO

v.

No. M-40-MR-201900060

Babb, David - Defendant



CRIMINAL COMPLAINT

CRIME:

Count 1 - 60-13-12 (B) - Working as a contractor without required license (\$5000 or less) a
misdemeanor

The undersigned, under penalty of perjury, complains and says that on or about the 25th day of May, 2017 in the County of Quay, State of New Mexico the above named defendant(s) did:

Count 1: Contracting without a license (\$5,000 or less)

The above named defendant acted in the capacity as a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978] without a license required by that act, and any person who holds himself out as a sales representative of a contractor which contractor is without a license as required by that act, is guilty of a misdemeanor, contrary to Section 60-13-12, NMSA 1978

Statement of facts:

On or about May 25, 2017, the defendant, David Babb dba TBZ Inc., acted in the capacity of an electrical contractor in the Village of Logan, located in Quay County, NM. The defendant performed electrical contracting work, billing, and receiving money for that work, which requires a license as defined by the Construction Industries Licensing Act, and that work was performed without a valid license issued by the division to bid and or perform the type of work to be undertaken.

On or about April 12, 2017, David Babb entered into a stipulated agreement with the Construction Industries Division willingly and voluntarily relinquishing his contractor's license and qualifying party certificate as well as agreeing to pay a civil penalty in the amount of \$10,000.00. Mr. Babb also agreed to abide by the terms of the agreement as a result of an act of unlicensed contracting by installing HVAC equipment and connecting propane piping to those devices. On May 17, 2017, the Construction Industries Commission issued the Order revoking the License for TBZ Electric and the QP Certificate for David Babb.

As part of the terms of the agreement on page 4 under 7 C, Mr. Babb acknowledges that he shall not engage in unlicensed contracting in New Mexico or face misdemeanor charges. Mr. Babb and his attorney both signed the agreement dated April 12, 2017.

Through a freedom of information request, Construction Industries Division (CID) obtained copies of invoices and checks from the Village of Logan starting on May 25, 2017, and continuing until February 15, 2018. The invoices were billing invoices for electrical work for the Village of Logan, as the customer, and were submitted by TBZ Electric and TBZ Inc. In total there were eleven (11) invoices totaling \$1,085.72 in billed work, and there were seven (7) checks issued for a total paid to TBZ Electric Inc. of \$1,090.72.

The Construction Industries Division (CID) regulates licensing in the building industry and sets the requirements for classifications and what work requires licensing. Prior to the actual work commencing, the contractor is required by statute (60-12-12(A)) to possess a valid contractor's license with a classification to cover the scope of work to be undertaken.

David Babb has continued to perform work in the electrical trade as a contractor, defined by CILA 60-13-3(A)(15) (see reference sheet), in direct violation of the Construction Industries Licensing Act 60-13-12(A) and the Stipulated Agreement he voluntarily entered into with the Construction Industries Division whereupon he relinquished his electrical contractors license and qualifying party certificate. Any and all work performed after May 17, 2017, was performed as an unlicensed contractor.

The Construction Industries Licensing Act (CILA) defines a contractor as;
60-13-3. Definition; contractor.

As used in the Construction Industries Licensing Act [60-13-1 NMSA 1978], "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any:

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

contrary to Section(s)

Count 1 – 60-13-12 (A), a misdemeanor offense

[NMSA 1978]

PENALTY:

60-13-52. Penalty; misdemeanor.

A. Any person who acts in the capacity as a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978] without a license required by that act, and any person who holds himself out as a sales representative of a contractor which contractor is without a license as required by that act, is guilty of a misdemeanor, and upon conviction therefor the court shall:

(1) where the dollar value of the contracting work is five thousand dollars (\$5,000) or less, sentence the person to be imprisoned in the county jail for a term of ninety days or to the payment of a fine of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500), or to both such imprisonment and fine in the discretion of the court;

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

If Probable Cause Determination Required:

- ☐ Probable Cause Found
- ☐ Probable Cause Not Found, and
- ☐ Defendant Released from Custody

X

Dean Cooper
Dean Cooper -- Complainant

Criminal Investigator (CID)

Title (if any)

Reference Sheet

The Construction Industries Licensing Act (CILA) states;

60-13-1.1. Purpose of the act.

The purpose of the Construction Industries Licensing Act [60-13-1 NMSA 1978] is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work. To effect this purpose, it is the intent of the legislature that:

- A. examination, licensing and certification of the occupations and trades within the jurisdiction of the Construction Industries Licensing Act be such as to ensure or encourage the highest quality of performance and to require compliance with approved codes and standards and be, to the maximum extent possible, uniform in application, procedure and enforcement;
- B. there be eliminated the wasteful and inefficient administrative practices of dual licensing, duplication of inspection, non-uniform classification and examination of closely related trades or occupational activities and jurisdictional conflicts; and
- C. contractors be required to furnish and maintain evidence of responsibility.

60-13-12. Contractor's license required.

- A. No person shall act as a contractor without a license issued by the division classified to cover the type of work to be undertaken.
- B. No bid on a contract shall be submitted unless the contractor has a valid license issued by the division to bid and perform the type of work to be undertaken; provided this subsection shall not prohibit a licensed contractor from bidding or contracting work involving the use of two or more trades, crafts or classifications if the performance of the work in the trades, crafts or classifications other than the one in which he is licensed is incidental or supplemental to the performance of the work in the trades, crafts or classifications for which he is licensed; and further provided that work coming under the jurisdiction of the mechanical bureau or the electrical bureau of the division must be performed by a contractor licensed to perform that work.

The definition of a **Contractor** as defined by CILA states:

60-13-3 NMSA 1978 - Definition: contractor;

- A. Means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes construction, altering, repairing, installing or demolishing any:
 - (15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners;

The License Classifications are stated in the New Mexico Administrative Code and would require the following classification to perform the above described work. (Cont'd)

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 6 CONSTRUCTION INDUSTRIES LICENSING
PART 6 CLASSIFICATIONS AND SCOPES

14.6.6.10 ELECTRICAL CLASSIFICATIONS:

B. License classifications.

(1) Residential and commercial.

(a) EE-98 Residential and commercial electrical wiring 5000 volts, nominal or less. Requires four years experience. Includes all electrical wiring operating at 5000 volts, nominal, or less, electrical wiring identified in electrical specialty classifications ES-1, ES-2, ES-3 and ES-7, residential electrical wiring identified in classification ER-1, and only trenching and ductwork associated with classification EL-1. Does not include electrical wiring defined in the EL-1 classification other than trenching and duct work as specified above. May bid and contract as the prime contractor of an entire project provided the electrical contractor's portion of the contract, based on dollar amount, is the major portion of the contract.

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 5 CONSTRUCTION INDUSTRIES GENERAL PROVISIONS
PART 2 PERMITS

14.5.2.8 PERMITS REQUIRED:

A. Permits required. Subject to CILA Section 60-13-3, section 60-13-45, and the provisions of the CID rules, no building or structure shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, and no electrical wiring, plumbing or mechanical work as defined and described in the applicable New Mexico construction codes for those trades, may be installed, repaired or maintained in or on such building or structure, unless the applicable permit has first been obtained from the division. All re-roofs require a building permit and inspections.